

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH WISE	:	CIVIL ACTION
	:	
v.	:	
	:	No. 06-2233
MATTHEW D. CARRAFIELLA, et al.	:	

ORDER-MEMORANDUM

AND NOW, this 22nd day of June, 2006, plaintiff's pro se "Motion to Proceed in Forma Pauperis" is granted, 28 U.S.C. § 1915(a), and the complaint is dismissed with prejudice for lack of subject matter jurisdiction and for failure to state a claim for which relief may be granted, 28 U.S.C. § 1915(e)(2)(B)(ii).¹

Plaintiff Joseph Wise's statement in support of request to proceed in forma pauperis demonstrates his inability to pay the statutory filing fee.² He is presently unemployed, has no savings, pensions or investments, and derives his only income from social security (\$603 per month). He lists no dependents, but it appears that his financial condition renders him unable to pay the statutory filing fees and costs of prosecution.

¹ Relevantly, the statute states, "Notwithstanding any filing fee or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal . . . (ii) fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

² "One need not be completely destitute in order to proceed in forma pauperis under § 1915. An affidavit demonstrating that the petitioner cannot, because of poverty, provide himself and any dependents with the necessities of life is sufficient." Rewolinski v. Morgan, 896 F. Supp. 879, 880 (E.D. Wis. 1995), citing Adkins v. E.I. DuPont de Nemours & Co., 331 U.S. 335, 339-40 (1948).

With respect to the merits of plaintiff's claim, his complaint, read liberally,³ is that the defendants⁴, in their roles as judicial officers presiding over the action in ejectment filed against plaintiff, and the appeal from the decision adverse to plaintiff, acted to deprive him of his constitutional rights, as well as his right to real property located in Philadelphia.⁵ Complaint, ¶¶ 31, 33, 35-38, 41, 44.

This court lacks subject matter jurisdiction over plaintiff's claims.⁶ Additionally,

³ Plaintiff's pro se complaint should be construed liberally. Rewolinski, 896 F. Supp. at 880, citing Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

⁴ The defendants are all judges. Judge Carafiello serves on the Court of Common Pleas of Philadelphia County. Judges Del Sole, Gantman and Olszewski serve on the Superior Court of Pennsylvania.

⁵ On December 1, 2003, Judge Carafiello entered an order requiring plaintiff to vacate the premises at 2001 Hunting Park Avenue in Philadelphia, and ordering Wise to pay back rent to the rightful owner. See Order in Randolph v. Goldsmith, C.P. Phila., June Term 2003, No. 1252, Exhibit "H" to plaintiff's complaint. On June 8, 2004, Judges Del Sole, Gantman and Olszewski issued a memorandum and order affirming Judge Carafiello's order. See Memorandum in Randolph v. Goldsmith, No 3849 EDA 2003, Exhibit "O" to plaintiff's complaint. This is the third action plaintiff has filed in this court to obtain rights to the property or damages for his loss of it. On February 22, 2006, defendants' 12(b)(6) motion was granted in Wise v. Miller, U.S.D.C., E.D. Pa., No. 05-cv-2820. Plaintiff's appeal is currently pending at No. 06-1944. On November 14, 2005, plaintiff's complaint in Wise v. Randolph, U.S.D.C., E.D. Pa., No. 05-5522, was dismissed for lack of subject matter jurisdiction.

⁶ The gist of plaintiff's claim is that in the course of adjudicating the action in ejectment and subsequent appeal, the judicial defendants violated plaintiff's constitutional rights. Pursuant to the *Rooker-Feldman* doctrine, this court lacks subject matter jurisdiction to review state court decisions. District of Columbia Court v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The doctrine applies in § 1983 cases, and protects decisions of the states' lower courts, as well as higher courts, from federal court review. Port Auth. PBA v. Port Auth. of N.Y. and N.J., 973 F.2d 169, 178 (3d Cir. 1992).

Federal civil rights claims "inextricably intertwined" with a state court's action must be dismissed under the *Rooker-Feldman* doctrine. Parkview Assoc. Partnership v. Lebanon, 225 F.3d 321, 325 (3d Cir. 2000) (barring action "'where federal relief can only be predicated upon

because the doctrine of judicial immunity bars damages claims based upon judicial conduct, plaintiff has failed to state a claim against the judicial defendants for which relief can be granted.⁷

BY THE COURT:

/s/ Edmund V. Ludwig
Edmund V. Ludwig, J.

conviction that the State Court was wrong.”) Here, any civil rights violation s arising from the eviction of plaintiff from property that he did not own falls into that category. Under *Rooker-Feldman*, they are not subject to review by this court.

⁷ Matter of XYP, 567 A.2d 1036, 1039 (Pa. 1989) (recognizing doctrine). The doctrine applies when the judge has jurisdiction over the subject matter before him and is performing a judicial act. Mireles v. Waco, 502 U.S. 9 (1991). It applies whether the judicial act at issue was in error, performed with malice, outside the judge’s authority, or the result of a conspiracy. Stump v. Sparkman, 435 U.S. 349, 356 (1978); Dennis v. Sparks, 449 U.S. 24 (1980). It applies to civil rights claims. Pierson v. Ray, 386 U.S. 547 (1967). No extra-judicial conduct is alleged in the complaint. The doctrine of judicial immunity bars plaintiff’s claims against the judicial defendants.